



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for compensation payable to a tenant where the landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*, as provided under section 51(2) of the Act.

The tenants appeared at the hearing; however, there was no appearance on part of the landlord.

Since the landlord did not appear, I explored service of hearing documents upon the landlord. The tenants submitted that they sent their proceeding package and evidence to the landlord via registered mail on November 5, 2019 at the address of the residential property where the rental unit was located and the landlord purchased. The tenants provided registered mail tracking number and a print out from the Canada Post website showing delivery of the registered mail package on November 7, 2019.

I was satisfied the landlord was duly served with notification of this proceeding and I continued to hear from the tenants without the landlord present.

It should be noted that the landlord named in this matter is the purchaser of the residential property where the rental unit was located and the tenancy was ended under section 49 of the Act so that the purchaser, or close family member of the purchaser may occupy the rental unit. Under section 58 of the Act, "landlord" includes a purchaser as defined in section 49 who, under section 49(5)(c), asks a landlord to give notice to end a tenancy of a rental unit. Upon review of the 2 Month Notice that was served upon the tenants, and provided as evidence, I note that it was issued pursuant to section 49(5)(c) of the Act and the name of the purchaser, as stated on the 2 Month Notice, is the individual named as landlord in the tenant's Application for Dispute Resolution.

Pursuant to section 58 of the Act, I find the purchaser of the property meets the definition of “landlord” for purposes of this proceeding and the tenants correctly identified the landlord in this matter.

Issue(s) to be Decided

Are the tenants entitled to additional compensation from the purchaser/landlord under section 51(2) of the Act because the purchaser/landlord did not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*?

Background and Evidence

The tenants entered into a tenancy agreement with the former owner(s) of the property starting on May 15, 2006. The tenants occupied the rental unit, a basement suite, with their children and dog. At the end of their tenancy their monthly rent was \$1,025.00 payable on the first day of every month.

The property was put up for sale and then the tenants were served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* (“2 Month Notice”) by their former landlord on June 27, 2019. The 2 Month Notice had a stated effective date of August 31, 2019 and indicates the reason for ending the tenancy is as follows:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The name of the purchaser was identified in the space provided on the 2 Month Notice. The name of the purchaser is the landlord identified in this decision.

After receiving the 2 Month Notice the tenants were in receipt of a text message from the former owner indicating the purchaser was asking how much the tenants were willing to pay to stay in the rental unit with a question mark beside \$1,500 and \$1,600. The tenants responded by proposing various amounts that were greater than the rent they were paying, up to \$1,400 per month; however, they were ultimately informed that the purchaser decided not to rent out the basement suite.

The tenants vacated the rental unit on August 31, 2019. In September 2019 and October 2019, the tenants observed the rental unit advertised for rent on social media, the internet, and by way of a sign posted in the front yard. The tenant called the telephone number listed in the advertisements at the end of October 2019 and was told by the person who answered the phone that the unit had been rented.

The tenants seek compensation pursuant to section 51(2) of the Act, 12 times their monthly rent, plus recovery of the filing fee.

The tenants provided evidence that included copies of: the 2 Month Notice, text message communications with the former landlord, and rental advertisements for the rental unit posted online in September 2019 and October 2019.

Analysis

Where a tenancy is brought to an end by way of a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation, as provided under section 51 of the Act.

In this case, the tenants have provided sufficient evidence to show that they were served with a notice to end tenancy issued under section 49(5) of the Act and their tenancy was brought to an end because of that notice. Section 49(5) provides as follows:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family

member of that person, intends in good faith to occupy the rental unit.

[My emphasis underlined]

Since the tenancy was ended pursuant to a notice to end tenancy issued under section 49 of the Act, I find the compensation provisions of section 51 apply.

The tenants are seeking additional compensation that is payable in certain circumstances, as provided under section 51(2) of the Act. Section 51(2) provides as follows:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[My emphasis underlined]

The tenancy ended on August 31, 2019 and I find the evidence before me shows that the purchaser proceeded to advertise and rent out the rental unit in the few months that followed. Accordingly, I find I am satisfied that the purchaser, or a close family member of the purchaser, did not occupy the rental unit within a reasonable amount of time after the tenancy ended and for at least six months. I was not provided any submissions or evidence to suggest extenuating circumstances prevented the landlord/purchaser from using the rental unit for the purpose stated on the 2 Month Notice. Therefore, I find the tenants have established an entitlement to the compensation payable under section 51(2) of the Act which is 12 times the monthly rent. Therefore, I award the tenants \$12,300.00 [12 x \$1,025.00].

I further award the tenants recovery of the \$100.00 filing fee they paid for this application.

In keeping with all of the above, I provide the tenants with a Monetary Order in the sum of \$12,400.00 to serve and enforce upon the purchaser/landlord.

Conclusion

The tenants are provided a Monetary Order in the sum of \$12,400.00 to serve and enforce upon the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 11, 2020

Residential Tenancy Branch